shipper's control when the bill of lading was issued. *Bostwick* v. *B. & O. R. Co.*, 45 N. Y. 712. The correct view is that the shipper has performed his part of the prior oral contract which cannot be altered by the subsequent acceptance of a bill of lading without new consideration. *Missouri, K. & T. Ry. Co.* v. *Carter*, 9 Tex. Civ. App. 677, 29 S. W. 565.

In direct conflict with the above position, it has been held that if the shipper signs a bill of lading, even after the goods are shipped, the written contract merges the oral contract. *Stewart* v. *Cleveland, etc., R. Co.*, 21 Ind. App. 218, 52 N. E. 89; *Leonard* v. *Chicago & A. R. Co.*, 54 Mo. App. 293. And likewise where there is an acceptance by the shipper of a bill of lading though it was neither read nor signed, but here the bill of lading was accepted before the goods were shipped. *Germania Fire Ins. Co.* v. *Memphis & C. R. Co.*, 72 N. Y. 90, 28 Am. Rep. 113; *Hill* v. *Syracuse, B. & N. Y. R. Co.*, 73 N. Y. 351, 29 Am. Rep. 163. The principal case is clearly sound.

COURTS—RIGHT OF REMOVAL TO FEDERAL COURT—RESTRICTION ON FOREIGN CORPORATIONS.—A State statute provided if a foreign corporation should remove any suit brought against it by a citizen of the State to the Federal court, its license should be revoked. *Held,* the statute is void because in effect it denies a Constitutional right. *Western Union Tel. Co.* v. *Frear*, 216 Fed. 199. See NOTES, p. 288.

DAMAGES—LIQUIDATED DAMAGES AND PENALTIES.—The appellee made a contract to purchase certain lands from the appellant, paying therefor in equal installments. The contract further provided, "That if I fail to pay for said lot as above specified I will forfeit as liquidated damages for such breach of this contract and default of such payment, an amount equal to the full purchase price as above stipulated." There was a default after the payment of the first installment and the appellant sued for such amount. *Held,* such sum was a penalty and in the absence of allegation and proof of special damages the appellant could not recover. *Zenor* v. *Pryor* (Ind.), 106 N. E. 746. See NOTES, p. 290.

DAMAGES—SPECIAL DAMAGES—NOTICE.—The head of a dog was shipped to a Pasteur institute for an examination for rabies, the carrier's agent being informed of the purpose of the shipment. Delivery was delayed until an examination was impossible. *Held,* the carrier is liable for expenses resulting to the shipper from lack of certainty of the dog's condition. *Miller* v. *Southern Express Co.* (S. C.), 83 S. E. 449.

Special damages for breach of contract can not be recovered unless the party sought to be charged had notice of the circumstances out of which the special damages arise; for the parties are liable only for the loss of benefits which were in contemplation when the contract was made. *Lewark* v. *R. Co.*, 137 N. C. 383, 49 S. E. 882; *Chicago, etc., R. Co.* v. *Reid*, 38 Okla. 214, 132 Pac. 812. The courts, however, are not at one in their conception of what constitutes notice of the special circumstances. In a number of cases the rule has been strictly applied.

Thus, a carrier was held not liable for the loss of a quantity of tomatoes which spoiled because a shipment of packing cans was delayed. The carrier had been notified at the beginning of the canning season that all shipments must be rushed, as they were to be used for packing perishable goods. *Illinois, etc., R. Co.* v. *Hopkinsville Co.,* 132 Ky. 578, 116 S. W. 758. And where a shipper of household goods notified the carrier that such goods would be needed at once, and that the shipper would be unable to procure others, the carrier was nevertheless held not liable for physical discomfort and illness resulting from its refusal to deliver the shipment. *Alabama, etc., R. Co.* v. *McKenna* (Miss.), 61 South. 823.

Mere general knowledge of the importance of a shipment is insufficient. Information that a shipment of pipe is "very badly needed" is not enough. *Illinois, etc., R. Co.* v. *Johnson,* 116 Tenn. 624, 94 S. W. 600. The fact that the electric lights in the carrier's office were not burning was held not sufficient notice that a shaft consigned to the electric plant was needed for the generation of current. *Stone* v. *Adams Express Co.* (Ky.), 122 S. W. 200.

Sometimes the true ground of the decision in these cases is the distinction between cause and condition, or the doctrine of avoidable consequences. See *Williams* v. *R. Co.,* 56 Fla. 735, 48 South. 209, 131 Am. St. Rep. 169, 24 L. R. A. (N. S.) 134.

On the other hand, the mere fact that a heavy shaft was shipped by express instead of by freight was held sufficient notice that it was needed at once, and the consignee was allowed to recover for the idleness of his mill while the shaft was delayed. *Harper* v. *Express Co.,* 148 N. C. 87, 62 S. E. 145, 128 Am. St. Rep. 588, 30 L. R. A. (N. S.) 483. And where delivery of a threshing machine was delayed until after the threshing season, whereby the consignee lost a sale already contracted for, he was allowed to recover his expected profit. *Missouri Pacific R. Co.* v. *Peru-Van Zandt Co.,* 73 Kan. 295, 117 Am. St. Rep. 468. See also, *McConnell* v. *Express Co.* (Mich.), 146 N. W. 428; *Pecos, etc., R. Co.* v. *Maxwell* (Tex. Civ. App.), 156 S. W. 548.

DEAD BODIES—RIGHT OF ACTION FOR MENTAL ANGUISH RESULTING FROM MUTILATION.—Through the negligence of a common carrier a dead body was mutilated in transportation. The mother of the deceased brought suit to recover for mental anguish resulting from the occurrence, and joined her husband as a nominal party. The father was the next of kin to the deceased by the statute of distributions and hence upon him devolved duty of burying the child. *Held,* the mother cannot recover. *Floyd* v. *Atlantic Coast Line* (N. C.), 83 S. E. 12. See NOTES, p. 285.

EMINENT DOMAIN — COMPENSATION — BENEFIT—DAMAGES.—Under the power of eminent domain the defendant acquired a part of the plaintiff's land for a railroad right of way. The plaintiff sued for damages. *Held,* the benefits to the residue of the plaintiff's land arising from the construction of the railroad will not be deducted from the aggregate